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Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

750.7106-4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official of the Agency and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to the agency and/or to a foreign assistance contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will protect the foreign policy interests of the United States by assuring persons that they will be treated fairly and paid expeditiously.

750.7107 Limitations upon exercise of authority.

(a) The Executive Order is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation on profit or fees;

(3) The waiver of any bid, payment performance or other bond required by law.

(b) No amendments, or modifications shall be entered into under the authority of the Executive Order:

(1) Unless, with respect to cases falling within Section 4 of the Executive Order, a finding is made that the action is necessary to protect the foreign policy interests of the United States;

(2) Unless other legal authority in the Agency is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

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(c) No contract shall be amended or modified unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged.

(d) No informal commitment shall be formalized unless:

(1) A request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment;

(2) USAID has received the services satisfactorily performed, or has accepted property furnished in reliance on the commitment;

(3) The USAID employees alleged to have made the informal commitment have accepted responsibility for making the informal commitment in question; and

(4) USAID has taken appropriate action to prevent recurrence.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 16088, Apr. 24, 1985; 53 FR 4982, Feb. 19, 1988]

750.7108 Contractual requirements.

Every contract amended or modified pursuant to this subpart shall contain:

(a) A citation of the Act and Executive Order.

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding, with respect to cases falling within Section 4 of the Executive Order, that the action is necessary to protect the foreign policy interests of the United States.

750.7109 Submission of requests by contractors.

750.7109-1 Filing requests.

Any person (hereinafter called the "contractor") seeking an adjustment under standards set forth in 750.7106 may file a request in duplicate with the cognizant contracting officer or his/her duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the Chief of the Office of Acquisition and Assistance, Evaluation Division

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(M/OAA/E) for forwarding to the cognizant contracting officer.

[49 FR 13257, Apr. 3, 1984, as amended at 50 FR 50303, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990; 56 FR 67225, Dec. 30, 1991; 59 FR 33446, June 29, 1994; 72 FR 19670, Apr. 19, 2007]

750.7109-2 Form of requests by contractors.

The contractor's request shall normally consist of a letter to the contracting officer providing the information specified in FAR 50.303.

750.7109-3 Facts and evidence.

The contracting officer or the approving authority may, where considered appropriate, request the contractor to furnish the facts and evidence as described in FAR 50.304.

[49 FR 13257, Apr. 3, 1984, as amended at 62 FR 40469, July 29, 1997]

750.7110 Processing cases.

750.7110-1 Investigation.

The Evaluation Division of the Office of Acquisition and Assistance (M/OAA/E) shall be responsible for assuring that the case prepared by the cognizant contracting officer makes a thorough investigation of all facts and issues relevant to each situation. Facts and evidence shall be obtained from contractor and Government personnel and shall include signed statements of material facts within the knowledge of the individuals where documentary evidence is lacking and audits where considered necessary to establish financial or cost related facts. The investigation shall establish the facts essential to meet the standards for deciding the particular case and shall address the limitations upon exercise of the authority of the M/OAA Director to approve the request.

[62 FR 40469, July 29, 1997, as amended at 64 FR 42042, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

750.7110-2 Office of General Counsel coordination.

Prior to the submission of a case to the M/OAA Director recommending extraordinary contractual relief, the claim shall be fully developed by the cognizant contracting officer and concurrences or comments shall be ob-

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tained from the Office of General Counsel for the proposed relief to be granted. Such concurrences or comments shall be incorporated in or accompany the action memorandum submitted for consideration to the M/OAA Director in accordance with 750.7110-3.

[62 FR 40469, July 29, 1997, as amended at 64 FR 42040, Aug. 3, 1999; 72 FR 19670, Apr. 19, 2007]

750.7110-3 Submission of cases to the M/OP Director.

Cases to be submitted for consideration by the M/OAA Director shall be prepared and forwarded by the cognizant contracting officer through M/OAA/E to the M/OAA Director by means of an action memorandum. M/OAA/E will review the action memorandum for accuracy and completeness. The action memorandum shall provide for approval or disapproval by the M/OAA Director of the disposition recommended by the contracting officer. The action memorandum shall address:

- (a) The nature of the case;
- (b) The basis for authority to act under section 750.7101;
- (c) The findings of fact essential to the case (see 750.7109-3) arranged chronologically with cross references to supporting enclosures;
- (d) The conclusions drawn from applying the standards for deciding cases, as set forth in 750.7106, to the findings of fact;
- (e) Compliance with the limitations upon exercise of authority, as set forth in section 750.7107 (for informal commitments, include statements addressing each of the limitations in paragraph (d) of 750.7107);
- (f) Concurrences or comments obtained from the Office of General Counsel;
- (g) Verification of funds availability and the contracting officer's determination of cost/price reasonableness when the disposition recommended requires payment to a contractor;
- (h) The disposition recommended and, if contractual action is recommended with respect to cases falling within Section 4 of the Executive Order, the opinion of the contracting officer that such action is necessary to protect the foreign policy interest of the United States; and